DIVISION I

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN MAUZY PITTMAN, CHIEF JUDGE

CA05-1178

May 31, 2006

APPEAL FROM SEBASTIAN CIRCUIT COURT
[NO. DR-04-1140-2]

HON. HARRY A. FOLTZ, JUDGE

AFFIRMED

RAM THI LE
APPELLANT

V.

VAN HIEM NGUYEN
APPELLEE

This is an appeal from an order dividing marital property in a divorce case. The division implemented by the trial judge was based on his finding that appellant removed substantial sums of cash from a bank safe deposit box and from a strongbox kept under the bed in the marital home. Appellant contends that the trial court erred in denying her motion for new trial based on recantation of certain trial testimony by the parties' son, and that the evidence was insufficient to support the property division because there was no corroboration to support appellee's testimony that money was missing from the marital home. We find no error, and we affirm.

We first address appellant's argument relating to the denial of her new-trial motion. We do not reverse the trial judge's refusal to grant a new trial absent an abuse of discretion. *Hicks v. State*, 327 Ark. 652, 941 S.W.2d 387 (1997). Newly discovered evidence is one of the least favored grounds to justify a new trial. *Id.* The question of whether a new trial should be granted on the ground of recanting testimony depends on all the circumstances of

the case, including testimony of witnesses submitted on the motion for new trial, and lies largely within the discretion of the trial court. *Cooper v. State*, 246 Ark. 368, 438 S.W.2d 681 (1969). It is the duty of the trial court to deny a new trial where it is not satisfied that recanting testimony is true, especially where it involves a confession of perjury. *Id.*

Here, appellee testified that he was arrested after his wife called police following a domestic disturbance on December 25. Appellee was taken from the house and detained. When he returned to find the house deserted, he discovered that $68,000 in cash derived from rental income that he and his wife kept in a box under the bed was missing. He also testified that there was an additional $55,000 in cash missing from a safe deposit box that he and his wife maintained at their bank. The parties' son, Dung, testified that he drove appellant to the bank and saw her remove small boxes and white envelopes stuffed full of money. The trial court, finding the testimony concerning the missing cash to be credible, included it in appellant's share of the marital property in making its division.

Immediately after the hearing, Dung partially recanted his testimony, affirming by affidavit that he had been with his mother at the safe deposit box and that he had seen her remove boxes and envelopes, but denying that he had seen money in the envelopes. The trial court denied the accompanying motion for new trial based on this partial recantation, stating in so doing that he remained convinced from the other evidence and testimony in the case that appellant removed the money from the safe deposit box as well as from under the bed. There was testimony and documentation introduced at the hearing to show that the parties owned several rental properties that produced substantial sums in rent, but that practically all of the money in the parties' checking account was derived from automatic deposits of appellee's paycheck from his employment at Whirlpool. We think that the lack of deposits of the rental income in the joint checking account supports the finding that this money was

held in cash. By appellant's own admission, the portion of this cash kept in the safe deposit box was there on September 30 when, as shown by the signature card, she went there with her husband, but she denied that there was any money in the safe deposit box when she went there with her son on December 27. There were no entries on the safe deposit registry between September 30 and December 27, and appellant could not explain how the money disappeared in the interim. Appellant also admitted that she removed all the money, $17,038.72, from the parties' joint savings account on December 28 and deposited it in another bank, but she stated that she could not remember the name of the bank. On the basis of the evidence and circumstances of this case, we cannot say that the trial court abused his discretion in denying appellant's motion for new trial. *See Cooper v. State, supra.*

Nor can we say that the evidence was insufficient to support the trial court's division of marital property. Our standard of review is well-settled:

> On appeal, chancery cases, such as divorces, are reviewed *de novo*. With respect to the division of property in a divorce case, we review the chancellor's findings of fact and affirm them unless they are clearly erroneous, or against the preponderance of the evidence; the division of property itself is also reviewed, and the same standard applies. A finding is clearly erroneous when the reviewing court, on the entire evidence, is left with the definite and firm conviction that a mistake has been committed. In order to demonstrate that the chancellor's ruling was erroneous, an appellant must show that the trial court abused its discretion by making a decision that was arbitrary or groundless. We give due deference to the chancellor's superior position to determine the credibility of witnesses and the weight to be given their testimony.

Skokos v. Skokos, 344 Ark. 420, 425, 40 S.W.3d 768, 771-72 (2001) (citations omitted). Here, the property division was based on the trial court's finding that appellant had taken possession of the marital funds in the form of cash that was kept in the home and in the parties' safe deposit box. Despite appellant's suggestion to the contrary, we think that the trial court could make useful observations of the parties' demeanor while testifying even

though both employed interpreters at trial. Although no corroboration was required for the trial court to find appellee's testimony to be worthy of belief, *see Norman v. Norman*, 268 Ark. 842, 596 S.W.2d 361 (Ark. App. 1980), we think that appellant's admitted removal of items from the safe deposit box and her emptying of the joint savings account demonstrated a pattern of appropriating marital property for her sole use following the incident leading to the divorce, and her inability to recall where she had deposited the funds she withdrew or to explain how the cash could have been missing from the safe deposit box since the last recorded visit cast considerable doubt on her own credibility. We find no clear error, and we affirm.

Affirmed.

GRIFFEN, J., agrees.

HART, J., concurs.